

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

vs.

TERRANCE LAVELL JAMES

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CASE NO.: 1:19-CR-00032-JB

ORDER

This case is before the Court on Defendant's Motion to Suppress. (Doc. 96). On February 5, 2019, the Order on Arraignment informed the defendant that all pretrial motions must be filed by July 18, 2008. (Doc. 19 at 2). "Pretrial motions filed after this date **must** contain an explanation as to why they were not timely filed and will be considered only if good cause for the tardy filing has been shown." (*Id.* (emphasis in original)). The case was set for jury selection on September 4, 2019 and for trial during the month of September. (*Id.*).

The Defendant's motion was filed on September, 10, 2019, six days after jury selection. This filing was over seven months after the deadline established in the Order on Arraignment. The Defendant, in his Reply Brief, notes he made what amounts to a tactical decision to delay in filing the Motion to Suppress. (Doc. 99). There is no suggestion that the issues raised by the Motion to Suppress were unknown to the Defendant at any time. Rather, Defendant now believes that his present evaluation of the evidence possessed by the United States "greatly bolsters the chances of the Defendant getting the Motion to Suppress granted." (*Id.* at 2).

"The following must be raised before trial: ... a motion to suppress evidence" Fed. R. Crim. P. 12(b)(3)(C). "The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions" *Id.* 12(c)(1). "If a party does not meet the

deadline for making a Rule 12(b)(3) motion, the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause.” Rule 12(c)(3). The Eleventh Circuit has repeatedly upheld the authority of trial courts to enforce Rule 12. *E.g., United States v. Atkins*, 702 F. App'x 890, 894 (11th Cir. 2017) (noting district courts may set, extend, or reset a deadline for the parties to make motions that must be filed before trial, including motions to suppress.); *United States v. Cox*, 2008 WL 2428242 at *1-2 (11th Cir. 2008); , 241 Fed. Appx. 676, 677 -78 (11th Cir. 2007); *United States v. Avery*, 205 Fed. Appx. 819, 824-25 (11th Cir. 2006); *United States v. Smith*, 918 F.2d 1501, 1509 (11th Cir. 1990); *United States v. Milan-Rodriguez*, 828 F.2d 679, 683 (11th Cir. 1987).

There is no question the statement – and the facts and circumstances surrounding it – Defendant seeks to suppress was known and available to him before his original arraignment on February 5, 2019. (Doc. 97 at 3). This scenario fits squarely within Eleventh Circuit jurisprudence. “A defendant does not have good cause warranting relief from the waiver when he had all the information necessary to bring a [Rule] 12(b) motion before the date set for pretrial motions, but failed to file it by that date.” *United States v. Milo*, 267 Fed. Appx. 916, 917 (11th Cir. 2008) (citing *United States v. Ramirez*, 324 F.3d 1225, 1228 n.8 (11th Cir. 2003)).

Under the authorities cited above, Defendant’s failure to file a motion to suppress until long after the filing deadline and shortly before trial, negates good cause. The motion to suppress is **DENIED**.

DONE and ORDERED this 18th day of September, 2019.

s/JEFFREY U. BEAVERSTOCK
UNITED STATES DISTRICT JUDGE